LAW AND CONTEMPORARY PROBLEMS

VOLUME 37 SUMMER, 1972 NUMBER 3

FOREWORD

Efforts to establish a legal regime for economic cooperation between the socialist and market countries have shown an increasing tendency towards ever broader accommodation of mutual interests. On the one hand, socialist countries have abandoned the principle that foreign capital may not participate directly in domestic economic ventures, and on the other hand, businessmen of the free economy countries have accepted the fact that foreign trade with the socialist system is centrally controlled and involves direct dealings with state enterprises.

On both sides important concessions of principle have been made. The socialist states, including the Soviet Union, have had to accept a regime of foreign trade which is in conflict with their constitutional institutions. The law of foreign trade had to provide for the protection and enforcement of foreign trade transactions in which partners of the government institutions of the socialist countries were either natural persons or business organizations.

There was a short period when the Soviet government sought to organize foreign trade on the principle of barter, thereby avoiding the necessity of devising a common legal regime for East-West trade. However, when it appeared that barter could not serve as a permanent technique for an expanded exchange of goods and services, the Soviets agreed that the law of foreign trade should be that of the capitalist countries. Toward the end of the interwar period Soviet policy changed and a regime was devised which made it possible to make foreign trade contracts in the Soviet Union and to negotiate and litigate legal problems in that country. Foreign traders were assured access to courts and government arbitral institutions, and their claims and property rights were recognized in Soviet law, although Soviet citizens were as a matter of principle denied such protection. The legal system of foreign trade developed in the Soviet Union was generally accepted by the other socialist regimes in Eastern Europe and Asia.

At the same time socialist legal systems were making concessions to accommodate the legal protection to private entrepreneurs from the capitalist countries, Western business concerns were devising trading techniques to meet the demands and hazards of trading with socialist trade organizations. They were, and still are, at a marked disadvantage in comparison to their socialist partners in trade, primarily because they were, and still are, denied real opportunities to explore socialist markets and the

needs of the socialist consumers. Imports and exports to and from the socialist countries are determined by the national economic plan, and in most cases business initiative belongs to the socialist trader, who as a matter of course is a government agent enforcing a government policy. Various techniques are used to offset this disadvantage, including the adaptation of some of the socialist practices to the conditions of the free economy countries. Annual trade agreements which establish the volume, value, and classes of commodities to be exchanged are now being systematically made. In addition, free economy business concerns have, with the cooperation of their governments, established foreign trade agencies, trade organizations, and commercial arbitration tribunals, which are able to negotiate and cooperate with the foreign trade agencies of the socialist countries. A very valuable contribution by a Japanese author describes problems which a free economy country may experience in this connection.

The current regime of East-West relations contains characteristics which distinguish it essentially from the earlier practices. First, there is a general tendency to avoid tying it to legal systems of either the socialist or capitalist countries, due to the considerable rapprochement of the foreign trade rules in both systems. In addition, a more liberal attitude has been adopted as regards the choice of commercial arbitration for the settlement of disputes arising from business transactions in East-West trade. Although East-West trade represents a separate dimension in global economic cooperation, as readers of this symposium will see, important strides have been made towards integrating its jural terms into a general legal regime of international economic cooperation.

The present collection of essays comes from the pens of a great many experts from a number of countries, and wherever possible information was sought at the source. At the same time the American contingent of scholars and experts is an imposing one, and among them the writer of the present lines welcomes the contributions of his former students who have been initiated into problems of East-West trade at the Duke Law School.

KAZIMIERZ GRZYBOWSKI

September, 1973